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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROLF BRUCK

Appeal 2008-1291
Application 09/998,724
Technology Center 1700

Oral Hearing Held: April 17, 2008

Before EDWARD C. KIMLIN, BRADLEY R. GARRIS,
and KAREN M. HASTINGS, Administrative Patent Judges

ON BEHALF OF THE APPELLANT:

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1 The above-entitled matter came on for hearing on Thursday,
2 April 17, 2008, commencing at 9:45 a.m., at the U.S. Patent and Trademark
3 Office, 600 Dulany Street, Alexandria, Virginia, before Dawn A. Brown,
4 Notary Registration No. 7066896, Notary Public.

5 THE CLERK: Calendar Number 45, Mr. Dassler.

6 JUDGE KIMLIN: Good morning, Mr. Dassler.

7 MR. DASSLER: Good morning. How are you?

8 JUDGE KIMLIN: Fine, thank you. Please begin when you're
9 ready.

10 MR. DASSLER: If I could, I would like to start with the
11 advisory action, the examiner's remarks in the advisory action.

12 Throughout the advisory action, the examiner talks about the
13 fact that the Brewer reference -- or Bauer, I should say -- does not preclude
14 from using different materials, and that the Bauer reference doesn't exclude
15 two different materials in the same article.

16 I just want to reemphasize that those types of arguments, you
17 know, the exclusion of elements is not is not what is at stake -- it is what the
18 reference teaches and not what it doesn't exclude. And that was pointed out
19 in the brief on page 13 -- pages 12 and 13.

20 So from there I'd like to move over to the Bauer reference itself,
21 and particularly, the examiner relies on a statement in column 6 that shaped
22 articles for any other desired intended uses can be produced by the process
23 according to the invention for the production of porous-shaped particles
24 having a predetermined porous structure.

25 And as an example of this, he gives ceramic catalyst supports.
26 That is where he bases the rejection, and if we turn back to column 3, line

1 21, he says the particular precursors of the materials mentioned and,
2 furthermore, also composite materials of two or more of the above-
3 mentioned materials provided they can be processed in the form of
4 compositions which can undergo plastic deformation and then be solidified.

5 And then further down in that column, he states that the
6 invention relates to a process for the production of a porous-shaped article
7 based on the composition.

8 And then over on column 4, line 17, he discusses a transfer of
9 image formation for building up the porous-shaped article in layers from a
10 suitable preselected material, which would be one of these compositions
11 over here which would lead that -- Bauer is disclosing that the honeycomb
12 body would have to have a continuous wall of the same composition. Okay?

13 JUDGE GARRIS: That would include in claim 5 the
14 production of the honeycomb body and the first clause of claim 5, the
15 ceramic walls, all of that is [inaudible]. It is in the last clause that you define
16 something, namely this measuring sensor, for example --

17 MR. DASSLER: Uh-uh.

18 JUDGE GARRIS: -- which the examiner concedes it is not part
19 of Bauer's invention. And for that he relies on Maus.

20 MR. DASSLER: I'm going to get to that.

21 JUDGE GARRIS: Why don't you get to it right now. Explain
22 to us -- of course, the examiner's basic position is Maus teaches using a
23 measuring sensor in a honeycomb body. It would have been obvious,
24 therefore, to use a measuring sensor in the honeycomb body of Bauer. Why
25 don't you explain to us why the examiner is incorrect.

1 MR. DASSLER: And for that, if we can take a look at the
2 examiner's answer, page 6, there were arguments made that if a person of
3 ordinary skill in the art were to combine these two references then based on
4 the teaching of Bauer, they would manufacture two separate walls, printed
5 walls, according to Bauer, and then assemble them with a sensor between
6 the two walls.

7 Based on Brewer -- or Bauer -- I have another case that I'm
8 working on that has Brewer in it. But the examiner responds by saying such
9 contention is not persuasive being the fact that the method of embedding the
10 sensor in the ceramic body structure is not claimed. Note the claims
11 currently under appeal are directed to an article.

12 While it is entirely true that the claims under appeal are directed
13 to an article, the fact that if they were combined, the references were
14 combined, and they were manufactured in -- based on the combination of the
15 references, they wouldn't have the same construction as a layer that was
16 printed with these features embedded in there.

17 That is because if you look at figure -- the figure 1 of Maus,
18 you see there is an air gap between these corrugated layers, between these
19 layers. That would have a bearing on the thermal transfer properties of the
20 honeycomb body itself.

21 Furthermore -- so therefore, the article created by -- you know,
22 as we have a claim, would have different properties than the combination as
23 suggested by the examiner.

24 Furthermore on page 7 of the examiner's answer, he says such -
25 - pertaining to -- Maus is only directed toward metallic honeycomb

1 structures and since the ceramic powder is not built up with printed layers,
2 there is no link to the Bauer reference.

3 To that he says such contention is not persuasive as the primary
4 reference, Bauer, discloses the ceramic powders built up in printed layers as
5 the material of construction for the honeycomb body, and the secondary
6 reference, Maus, is relied upon for the teaching of the sensor and the
7 electrical lead-conducted mass.

8 Well, the sensor in Maus is the sensor that is placed into --
9 between the two walls, which are metallic walls and there is a ceramic area
10 around these. If you go -- if we look back at the advisory action, the
11 examiner states that Bauer would choose a suitable preselected material in
12 each layer, but all that Bauer discloses are porous elements that can be
13 produced.

14 Nowhere does he provide -- does the examiner make the link
15 that a porous element is suitable for this electrically conducted mass or the
16 sensor. Quite to the contrary.

17 JUDGE GARRIS: Let me just ask you the question that I think
18 is most relevant at this point. Why wouldn't one skilled in the art use
19 Bauer's technique for creating a honeycomb body in order to create the body
20 structure that is shown, for example, in figure 2 of Maus?

21 And after that structure is formed, the tubular center shown at
22 26 in figure 2 of Maus would then insert the measuring sensor assembly that
23 is disclosed by Maus into that honeycomb body?

24 MR. DASSLER: Well, the sensor of Maus is not the sensor as
25 would be produced by the present invention as claimed.

1 JUDGE GARRIS: I don't understand why you say that. It is a
2 sensor. It is for measuring temperature of the exhaust gas. That is what
3 your claim requires.

4 MR. DASSLER: It is not a porous element.

5 JUDGE GARRIS: I'm not following your claim.

6 MR. DASSLER: If I produce something --

7 JUDGE GARRIS: It isn't your claim that requires a sensor that
8 is not porous or is porous. I don't follow you.

9 MR. DASSLER: Bauer teaches a porous construction method
10 and the present invention pertains to a wall that is completely printed. The
11 entire wall is a completely printed formation. Okay?

12 And because if you were to make a wall of that nature based on
13 Bauer, you wouldn't have a sensor because you would have a porous
14 construction because he discloses only to make porous elements.

15 JUDGE GARRIS: Are you saying that your claim 5 requires
16 that the honeycomb body ceramic wall be formed of these printed layers just
17 like in Bauer's and claim 5 also requires that the measuring sensor is formed
18 in this printed-layer technique?

19 MR. DASSLER: Uh-huh.

20 JUDGE GARRIS: Well, I don't see anything in this claim that
21 requires such a construction.

22 MR. DASSLER: You don't?

23 JUDGE GARRIS: No.

24 MR. DASSLER: If the wall is entirely formed of a printed
25 layer, and the sensor is embedded or integrated into this wall, and the wall is
26 entirely formed of a printed layer, then how can it not be?

1 JUDGE GARRIS: Number one, the claim doesn't say that the
2 sensor is made by this the printed-layer technique; it just says the ceramic
3 walls are formed using this printed-layer technique. And then it just says a
4 measuring sensor is integrated into the walls. It seems to me that indicates
5 you could be adding the sensor after the walls are built.

6 MR. DASSLER: I would argue that the claims would not allow
7 that because of the language in the first line of the first paragraph that the
8 wall is entirely formed of the printed layer and this sensor is part of that wall
9 because it is in the wall.

10 JUDGE GARRIS: Let me just refer you, then, to your
11 specification.

12 MR. DASSLER: Okay.

13 JUDGE GARRIS: Turn to page 7, please.

14 The paragraph bridging pages 7 and 8 is the part of your
15 specification disclosure which, in fact, describes the combining of sensor
16 with your honeycomb body.

17 And beginning on line 20 it says, and I quote, "either the
18 measuring sensor is prefabricated and surrounded in layers during the
19 production of the body or else the measuring sensor is composed
20 simultaneously with production of a body."

21 So it seems to me according to your specification you do not
22 need to form the sensor using a printed-layer technique as you are producing
23 the honeycomb body. You can instead take a prefabricated measuring
24 sensor and you insert it while you are building the honeycomb body using
25 the printed-layer technique. And I think that second production method is
26 included in claim 5.

1 MR. DASSLER: Maybe as originally filed, but claim 5 has
2 been amended. And through those amendments, I would hold the position
3 that that is no longer the case because if we look at claim 5 as it was
4 originally filed --

5 JUDGE GARRIS: Why don't you just point out to us the
6 specific language in claim 5 as it exists right now which excludes the use of
7 a prefabricated measuring sensor.

8 MR. DASSLER: If I have a limitation that the entire wall is
9 formed of a printed layer and something is in that wall, it says the entire
10 wall. If something is in that wall --

11 JUDGE KIMLIN: If you have a wall here --

12 MR. DASSLER: Yeah.

13 JUDGE KIMLIN: -- and you punch a hole in it and put, say, a
14 thermostat in there, would the entire wall still be made of that material that
15 we see now excluding the thermostat? You following.

16 MR. DASSLER: Excluding it.

17 JUDGE KIMLIN: The wall would still be the plaster-type
18 material or whatever it is.

19 MR. DASSLER: But there is a hole in the wall now with a
20 different material in it.

21 JUDGE KIMLIN: Exactly. But the entire wall would still be
22 of the same material.

23 MR. DASSLER: How would it be if you have the thermostat
24 there?

25 JUDGE KIMLIN: Because the thermostat is not part of the
26 wall.

1 MR. DASSLER: But this sensor is part of the wall. If you look
2 at figure 2 of Maus, you can see this thing is disposed inside the wall. There
3 is a metal -- sheet metal --

4 JUDGE KIMLIN: It says -- your claim says the sensor is
5 integrated into the wall.

6 MR. DASSLER: Yeah.

7 JUDGE KIMLIN: What does that mean?

8 MR. DASSLER: Well, that it is in the wall. It is inside the
9 wall.

10 JUDGE KIMLIN: As would a thermostat be if you integrated it
11 into the wall.

12 MR. DASSLER: But then it is not entirely formed of a printed
13 -- it is not entirely formed of drywall. You have a hole with a thermostat.
14 Part of the wall is a thermostat. We're not saying the entire wall is one
15 material; it is all a printed layer. The sensor is a printed layer and the wall is
16 a printed layer. None of it is the same material.

17 JUDGE KIMLIN: I would suggest a reasonable interpretation
18 would be if I punched a hole in that wall, the entire wall would still be made
19 of drywall with a hole in it.

20 MR. DASSLER: Then you don't have another object in there.

21 JUDGE KIMLIN: If I stuck another object in there, the entire
22 wall would still be made of drywall. I think that would be a reasonable
23 interpretation.

24 MR. DASSLER: I'm not punching a hole in the formation of
25 our invention. There is no hole being punched in it. It is being built up as --

1 if you look at figure 1, you see how it is built up by the printing of the
2 layers.

3 JUDGE KIMLIN: The issue is whether or not that is part of the
4 claim or whether the claim reads upon your embodiment that doesn't require
5 that.

6 MR. DASSLER: I know I can -- you know, obviously, there is
7 room for, you know, disagreement there, but I would just suggest or
8 emphasize that the claim language is the entire wall is formed of that -- of a
9 printed layer. Not that it is the same material, but it is entirely printed.

10 And if you print with Bauer an entire wall, you're going to have
11 porous structure because that is what he discloses, and nowhere does the
12 examiner provide the link that a porous structure is suitable for a sensor or
13 electrically conductive element.

14 And I would say to the contrary. If I have an electrically
15 conductive element, I wouldn't want it to be porous because it is going to
16 have a negative on the conductivity. And likewise, it would change any
17 thermal properties thereof. So I mean, you know, I can -- that is all I really
18 have.

19 JUDGE KIMLIN: I think we understand the issue now.

20 MR. DASSLER: I understand the issue, and I knew coming in
21 that it was difficult. But I just ask that you consider the fact that it is entirely
22 formed of these printed layers. And, I mean, there is nothing else in the
23 claim language that I can rely on. That much is true.

24 JUDGE KIMLIN: I think we have a better understanding of
25 your point of view.

26 MR. DASSLER: Thank you.

- 1 JUDGE KIMLIN: Thank you.
- 2 Whereupon, the proceedings at 10:05 a.m. were concluded.